

SUBCHAPTER A: GENERAL FINANCIAL ASSURANCE REQUIREMENTS

§§37.1, 37.11, 37.21, 37.31, 37.41, 37.51, 37.52, 37.61, 37.71, 37.81

Effective January 30, 2003

§37.1. Applicability.

This chapter applies to an owner or operator required to provide financial assurance. The terms “owner or operator” and “owner and operator” are used throughout this chapter to indicate any or all of the following: owner, operator, licensee, permittee, registrant, or person. Refer to the applicable subchapter(s) of this chapter for guidance specific to a program area.

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Effective March 21, 2000

§37.11. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) **Assets** - All existing and all probable future economic benefits obtained or controlled by a particular entity.
- (2) **Closure plan** - The plan for closure prepared in accordance with commission requirements.
- (3) **Corporate guarantor** - Must be the direct or higher-tier parent corporation or a firm with a substantial business relationship with the owner or operator.
- (4) **Current assets** - Cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.
- (5) **Current closure cost estimate** - The most recent of the estimates prepared for closure.
- (6) **Current cost estimate** - The most recent estimates prepared in accordance with commission requirements for the purpose of demonstrating financial assurance for closure, post closure, or corrective action.
- (7) **Current liabilities** - Obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(8) **Current post closure cost estimate** - The most recent of the estimates prepared in accordance with commission requirements.

(9) **Current plugging and abandonment cost estimate** - The most recent of the estimates prepared in accordance with Chapter 331 of this title (relating to Underground Injection Control).

(10) **Entity** - For the purposes of this chapter, means a legal organization engaged in lawful business or purpose, such as a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or limited partnership or similar business organization.

(11) **Face amount** - The total amount the insurer is obligated to pay under an insurance policy, excluding legal defense costs.

(12) **Financial responsibility** - This term shall be used interchangeably with financial assurance.

(13) **Independent audit** - An audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(14) **Liabilities** - Probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(15) **Net working capital** - Current assets minus current liabilities.

(16) **Net worth** - Total assets minus total liabilities and equivalent to owner's equity.

(17) **Parent corporation** - A corporation which directly owns at least 50% of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a subsidiary of the parent corporation.

(18) **Permit** - Written permission from the commission, including a permit, license, registration, or other authorization, to engage in a business or occupation, to perform an act (such as to build, install, modify, or operate a facility), or to engage in a transaction, which would be unlawful absent such permission.

(19) **Post closure** - This term shall be used interchangeably with the term "Post closure care."

(20) **Post-closure order** - An order issued by the commission for post-closure care of interim status units, a corrective action management unit unless authorized by permit, or alternative

corrective action requirements for contamination commingled from RCRA and solid waste management units.

(21) **Post-closure plan** - The plan for post-closure care prepared in accordance with commission requirements.

(22) **Program area** - Commission areas under which the facility is permitted, licensed, or registered to operate, including, but not limited to, Industrial and Hazardous Waste, Underground Injection Control, Municipal Solid Waste, or Petroleum Storage Tanks.

(23) **Standby trust** - An unfunded trust established to meet the requirements of this chapter.

(24) **Substantial business relationship** - A relationship where the guarantor is a corporation and owns at least 50% of the entity guaranteed.

(25) **Tangible net worth** - The tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

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§37.21. Wording and Approval of Mechanisms.

The mechanisms submitted for compliance with this chapter must be worded as they appear in Subchapter D or G of this chapter (relating to Wording of the Mechanisms for Closure, Post Closure, and Corrective Action or Wording of the Mechanisms for Liability). The executive director shall determine the acceptability of the mechanisms submitted.

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§37.31. Submission of Documents.

(a) An owner or operator required by this chapter to provide financial assurance for closure, post closure, or liability coverage must submit an originally signed financial assurance mechanism to the executive director 60 days prior to acceptance of waste. The mechanism must be in effect before the initial receipt of waste.

(b) An owner or operator required by this chapter to provide financial assurance for corrective action must submit an originally signed financial assurance mechanism 60 days after the permit or order requiring the corrective action financial assurance is signed by the executive director or commission. The mechanism must be in effect when submitted.

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§37.41. Use of Multiple Financial Assurance Mechanisms.

(a) An owner or operator may satisfy the requirements of this chapter by establishing more than one financial assurance mechanism per facility. These mechanisms are limited to those specified in this chapter. For closure, post closure, or corrective action, the financial test or corporate guarantee may not be combined with another mechanism. For liability coverage, the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor.

(b) It shall be the combination of mechanisms, rather than the single mechanism, which shall provide financial assurance for an amount that must be at least equal to the minimum financial assurance requirements of this chapter.

(c) If an owner or operator uses a trust fund in combination with a surety bond or irrevocable standby letter of credit, the owner or operator may use that trust fund as the standby trust fund for the other mechanisms.

(d) A single standby trust may be established for two or more mechanisms.

(e) The executive director may call on any or all of the mechanisms to satisfy the requirements for which financial assurance was provided.

(f) If an owner or operator demonstrates the required liability coverage through the use of a combination of financial assurance mechanisms, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess."

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§37.51. Use of a Financial Assurance Mechanism for Multiple Facilities.

An owner or operator may use a financial assurance mechanism as specified in this chapter to meet the requirements of this chapter for more than one facility, provided that the facilities are in the same program area. Financial assurance submitted to the executive director shall include a list showing for each facility covered by the mechanism: the name, physical and mailing addresses of the facility, each program area and permit number, the rules regulating the program under which the facility is permitted, and the amount of funds demonstrated for each permit, for closure, post closure, corrective action, and liability. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for any of the facilities covered by

the mechanism, the executive director may call on only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

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§37.52. Use of a Universal Financial Assurance Mechanism for Multiple Facilities and Program Areas.

(a) An owner or operator may use a universal mechanism to meet the requirements of this chapter for multiple facilities permitted in multiple program areas, provided the mechanism is allowed to be used in the program areas represented. The amount of funds demonstrated by the universal mechanism must be no less than the sum of funds that would be available if separate mechanisms were established and maintained. The wording of the mechanisms must be in a form satisfactory to the executive director. The available mechanisms are those specified in this chapter, except that the financial test or corporate guarantee may not be combined with other specified mechanisms and a standby trust fund shall be required in certain circumstances. For liability coverage, the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor.

(b) A universal mechanism submitted to the executive director shall include a list showing, for each facility covered by the mechanism: the name, physical and mailing addresses of the facility, each program area and permit number, the rules regulating the program under which the facility is permitted, and the amount of funds demonstrated for each permit for closure, post closure, corrective action, and liability. The anniversary date of the universal mechanism is the date on which owners or operators shall make an annual inflation adjustment for all facilities demonstrating through the universal mechanism. In directing funds available through the universal mechanism for any of the facilities covered by the mechanism, the executive director may call on only the amount of funds designated for each permit for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(c) An owner or operator who intends to use the financial test or corporate guarantee as a universal mechanism, must certify the ability to meet the financial test or corporate guarantee requirements for each of the corresponding program areas for which the universal mechanism is intended to cover

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§37.61. Termination of Mechanisms.

Upon written request by the owner or operator, the executive director shall provide written consent to termination of a financial assurance mechanism when:

(1) an owner or operator substitutes and receives approval from the executive director for alternate financial assurance as specified in this chapter; or

(2) the executive director releases the owner or operator from the requirements of this chapter.

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§37.71. Incapacity of Owners or Operators, Guarantors, or Issuing Institutions.

(a) An owner or operator must notify the executive director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming the owner or operator as debtor, within ten business days after the commencement of the proceeding. As required under the terms of the guarantee, a guarantor of a corporate guarantee as specified in §37.261 of this title (relating to Corporate Guarantee) and a corporate guarantee as specified in §37.551 of this title (relating to Corporate Guarantee for Liability) shall make such a notification if named as a debtor.

(b) An owner or operator who fulfills the requirements of this chapter shall be deemed to be without the required financial assurance coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, irrevocable standby letter of credit, or insurance policy to issue such mechanisms. The owner or operator must establish other acceptable financial assurance within 60 days after such an event.

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§37.81. Transfer of Ownership or Operational Control.

When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of this chapter, until the executive director determines that the new owner or operator has demonstrated compliance with the requirements of this chapter. Upon determination by the executive director that the new owner or operator is in compliance with this chapter, the executive director shall provide written consent to termination of the financial assurance mechanism to the old owner or operator in accordance with §37.61 of this title (relating to Termination of Mechanisms).

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